SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-540

CECIL STATHAM, Petitioner,

vs.

W. STANLEY RIDDLE, JR., Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX

PAGE

REASONS FOR DENYING THE WRIT 1

CONCLUSION 6

TABLES OF AUTHORITY

Table of Cases

Dandridge v. Williams, 397 U.S. 471 (1970). 2, 3, 5

Lindsey v. Normet, 405 U.S. 56 (1972) . . . 3, 5

Ortwein v. Schwab, 93 S. Ct. 1172 (1973). . 4

San Antonio Independent School District v. Rodriguez, 93 S. Ct. 1278 (1973) 4

United States v. Kras, 409 U.S. 434 (1973) 5

Wyman, Commissioner of Social Services of New York v. Rothstein, 398 U.S. 275 (1970) reh. den. 93 S. Ct. 2276 (1973) 2, 3, 5

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October 8, 1973

Respondent, W. Stanley Riddle, Jr., prays that a writ of certiorari not issue, and that the judgment and opinion of the U.S. Court of Appeals for the Ninth Circuit in this case on August 7, 1973, be allowed to stand.

REASONS FOR DENYING THE WRIT

The Respondent is in agreement with Petitioner's statements in his petition regarding jurisdiction , questions presented, constitutional and statutory provisions involved and his statement of the case. However, the writ should be denied.

Petitioner appears to rely on a District

Court case, Rothstein vs. Wyman, 303 F. Supp. 339 (1969) for much of his argument that a fundamental right, to which the strict test should be applied. However, the Rothstein case was vacated and remanded in Commissioners of Social Services of New York et al vs. Rothstein, 398 U.S. 275 (1970). The Supreme Court, in a short opinion, held at 276-277:

> ". . . the judgment of the District Court is vacated and the case is remanded to that court for an opportunity to pass on the propriety of granting interim relief in accordance with conventional equitable principles on the basis of appellee's statutory claims, or, if the question is reached, continuing the present injunction in light of this courts decision in Dandridge vs. Williams, 397 U.S. 471 (1970)."

Further proceedings in the Rothstein case are reported in 336 F. Supp. 328, and 467 F 2d 226. However, nowhere in proceedings in the Rothstein case since the case was first reported in 303 F. Supp. 339 (1969) does a court make the statement that the receipt of welfare benefits is a fundamental, or critical personal right, or that the strict scrutiny test should apply. This lack of reliance

on the strict scrutiny test - fourteenth amendment argument in subsequent Rothstein case proceedings was made necessary by the ruling in Dandridge vs. Williams, supra.

In Dandridge, it was contended that because the state's classification (family size) injuriously treated welfare recipients statutory entitlements to the necessities of life, a "strict scrutiny" test should be applied. It was argued that the very necessities of life are as important as the interests protected by fundamental rights. In effect, the court was asked to find either that there was some kind of fundamental right to the necessities of life or that the strict scrutiny test was to be applied in cases involving important personal interests, not readily cognizable as constitutional rights, as well as cases involving fundamental rights. The majority, through Justice Stewart, found that such a holding would be unmanageable. Dandridge has settled what had not been given definitive legal treatment. The Dandridge view was upheld in Lindsey vs. Normet, 405 U.S. 56 (1972), in which the court rejected the proposition

that the need for decent shelter or the right to maintain peaceful possession of one's home were fundamental interests entitled to strict scrutiny review. It was further re-confirmed in Ortwein vs. Schwab, 93 S. Ct. 1172 (1973), in which the court held that appellate court filing fee requirements do not deny due process or equal protection to appellants unable to pay them.

If there was any remaining doubt as to the expansibility of the list of fundamental rights, the Court has removed it in San Antonio Independent School District vs. Rodriguez, 93 S. Ct. 1278 (1973). Because the public education was supported by local property taxes, school districts with a low property tax base, allegedly those where minority group members and poor persons resided, could not spend as much per pupil for education as wealthier districts. The district court found neither compelling interest nor reasonable basis for the classification, found education to be a "fundamental" interest, and held the system unconstitutional. The Supreme Court recognized that education may be the most important function of local government, but reversed

the district court, holding at 1297:

> "The lesson of these cases in addressing the question now before the court is plain. It is not the province of this court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence housing (referring to Dandridge and Lindsey vs. Normet). Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the constitution."

The majority could not find education a right so guaranteed, and refused to apply the strict scrutiny test.

In United States vs. Kras, 409 U.S. 434, 446 (1973) the court held that "Bankruptcy legislation is in the area of economics and social welfare. . . This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational classification." (Citing Dandridge, supra, inter alia.)

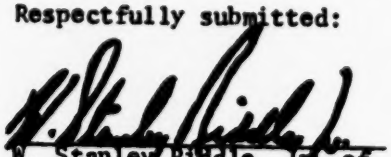
It appears clear, moreover, that the Supreme Court has rejected Rothstein, as it has rejected

the idea that education is a fundamental interest, entitled to strict scrutiny protection. In the cases which I have cited herein, I believe that the Supreme Court has rejected the idea that the petitioner should be entitled to the homestead exemption as a fundamental right, or interest, or that the strict scrutiny test should be applied.

CONCLUSION

Respondent prays that this court deny the petition for writ of certiorari.

Respectfully submitted:



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